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# **Victimhood and Femininities in Black Lesbian Asylum Cases in Germany<sup>1</sup>**

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## **Abstract<sup>3</sup>**

This paper focuses on Germany's assessment of refugee claims made by lesbians racialized as Black. Drawing on gender and queer migration scholarship's critique of the asylum system as hetero- *and* homonormative, the goal of this paper is to illustrate how lesbian asylum seekers' uneven biographies are assessed at the intersection of gender, sexuality, and race. I will first examine the 'double discrimination' lesbian asylum seekers face within Germany's asylum system because they are women and lesbians. I will second, assess the extent to which such double discrimination intersects with de-racialized idealizations of female victimhood and how that contributes to the exclusion of Black lesbians from refugee protection. I will use the example of two lesbian asylum cases from Uganda – both of which I have closely followed over the course of 10 months – so as to outline some of the main effects of such asylum practices as they relate to the question of who deserves Germany's legal protection and how this relates to normative conceptualizations of female victimhood and humanitarianism. I contextualize such in-depth analysis with data collected through semi-structured interview and case analysis as well as an examination of everyday practices of Black lesbian asylum seekers (and refugees).

**Keywords:** Lesbian, refugee victimhood, asylum, Germany, intersectionality

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## **Introduction**

All the available evidence suggests that in Germany, about 95 percent of lesbian asylum cases get rejected after the first interview.<sup>1</sup> This is in contrast to the general rejection rate of LGBTQI+ individuals seeking asylum of 50 percent<sup>2</sup> and that of heterosexual women of 30 percent<sup>3</sup>. While the numbers on LGBTQI+ asylum rejections are just an estimate because the Federal Office for Migration and Refugees (BAMF) does not separately register LGBTQI+ asylum cases, these numbers nevertheless suggest that lesbian asylum seekers face specific challenges when seeking refugee protection. In this paper, I center the most vulnerable cohort within Germany's asylum system – lesbian women racialized as Black.

I met Hope and Livia<sup>4</sup>, two lesbian asylum seekers from Uganda, at a networking event for non-binary gender queer asylum seekers and refugees in Germany in 2018. In Uganda, both have lived in abusive forced marriages while at the same time secretly entertaining a relationship with a female partner. Both have ultimately been detained because their sexual orientation was discovered. Both have left Uganda out of fear of future imprisonment, mob violence, and ostracization on the part of their family and community. Once in Germany, both their asylum claims have been denied because they were not believed to be lesbians. Hope and Livia's story is by no means an exception nor is it a tragic bureaucratic oversight or sheer bad luck. It is the norm.

Hope and Livia's stories provide us with a window onto the manner in which gender, sexuality, and race intersect in LGBTQI+ asylum cases in Germany. I will use the cases of Hope and Livia to show how narrow definitions of ideal female victimhood, as either lodged in the "Madonna with child" trope or the passive victim of gender-based violence, excludes those whose subjectivities in terms of gender sexuality, race and class do not align with the ideal figure and story of the victim. I argue that both representations of the "ideal" victim are constituted by a discursive construction around femininity that is culturally and historically specific and that is central to the assessment of lesbian asylum cases. More specifically, I contend that the discursive representation of femininity in the context of the Madonna-child trope and the trafficking victim presupposes a specific ideal of womanhood that is de-racialized and correlates with idealizations around the vulnerability of especially white women.

Overall, we know very little about how gender and sexuality structure the access of lesbian asylum seekers to refugee protection (Pittaway and Bartolomei 2001; Lewis 2010; Sheill 2009; Manalansan 2006, 2018). We know even less about how race complicates lesbians' access to asylum. My analysis focuses on Germany as a case study to examine the manner in which asylum claims made by lesbians racialized as Black are assessed under the Common European Asylum System (CEAS). Based on 24 personal interviews and written asylum decisions, I seek to render insight into the manner in which the credibility of the Black sexual lesbian asylum story is assessed. While credibility determinations are factual findings, case officers have a great flexibility in how they make and assess these findings. I will first examine the 'double discrimination' lesbian asylum seekers face within Germany's asylum system because they are women and lesbians. I will second, examine the extent to which such double discrimination intersects with de-racialized idealizations around female victimhood and how these contribute to the exclusion of Black lesbians from refugee protection. In so doing, I contend how such construction of ideal victimhood goes in tandem with the hyper-sexualization of Black lesbians as the 'other' non-conforming victim of violence and persecution. The goal is to illustrate how Black lesbian asylum seekers' uneven biographies, which include marriage and children as well as same-sex partnerships, disrupt both homo- as well as heteronormative stereotypes on womanhood and sexuality. I will use "*the lesbian asylum story*" to outline some of the main effects of such asylum practices as they relate to the question of who deserves Germany's legal protection and how this relates to de-racialized conceptualizations of female victimhood. Lastly, I offer some recommendations on how to work towards a more inclusive and just European asylum system. Theoretically, I draw on gender and queer migration scholarship's critique of the asylum system as hetero- *and* homonormative and uses intersectionality<sup>5</sup> to understand the marginalization of lesbian asylum seekers and refugees racialized as Black within Germany's LGBTQI+ asylum system.

Methodologically, I combine semi-structured interviews and case analysis with an examination of the everyday practices of asylum seekers (and refugees). The data derives from fifteen semi-structured interview on the experiences of asylum conducted with lesbian asylum seekers and refugees from Uganda, Tanzania, and Kenya, gender non-binary refugees from Tunisia and Syria, an intersex refugee from Iran, and trans refugees from Pakistan, Syria, and Iran. All these asylum seekers and refugees are affiliated with lesbian, gay, and queer counselling organizations with

which I collaborated in the context of this research. All information that would reveal the identity and current location of those participants who wish to remain anonymous has been removed. The analysis of the cases offered in this article is based on the Federal Office of Migration and Refugee (BAMF) documents, which contain the verbatim of the asylum interviews as well as the legal justification for the decision. These documents have been provided to me by the asylum seekers/refugees themselves. To give context, I further use twelve lesbian, ten trans, and nine bisexual asylum court decisions which I retrieved through the databank of the administrative courts in Germany and that have been sourced by applying a sensitive keyword search that included the terms \*homosexuality\*, \*asylum\*, \*transgender\*, \*intersex\*, \*bisexual\*, and \*lesbian\*. I further rely on data from nine semi-structured interviews conducted with asylum lawyers and judges at the administrative courts in Berlin and Cologne as well as representatives of LGBTQI+ refugee counseling centers and LGBTQI+ anti-discrimination offices in major cities in the federal states of Bavaria, North-Rhine Westphalia, and Baden-Württemberg. Lastly, I use public debate, policy reports, and legal documents available online to contextualize my analysis of the discussed asylum cases.

### **The Intersectionality of Gender and Sexuality in Germany's Asylum Law**

In Germany, the right for asylum is enshrined in Article 16a of the German Basic Law (*Bundesverfassung*) and is granted to anyone who can establish a well-grounded fear of political persecution. In line with a recent European Union Directive 2011/95/EU Germany recognizes human rights violations based on sexual orientation and gender identity as grounds for seeking asylum. Moreover, asylum law and policy in Germany is in accordance with several recent Court of Justice of the European Union (CJEU) rulings that recognize sexual orientation as a characteristic so fundamental that nobody should be forced to renounce it and that condemn intrusive questioning and the use of 'gay tests'.<sup>6</sup>

“Lesbian asylum seekers face a double discrimination within Germany's asylum system because they are women and lesbians”, says a psychologist at a lesbian counselling center in Bavaria. “Such discrimination”, she says, “stems from their complex biographies that are interlaced with episodes of violence that are a direct result of their identity as women and as lesbians.” According to these counseling centers, the most cited reasons that lead to the rejection of lesbian asylum seekers in

Germany is first, a woman's reluctance to immediately out herself during the hearing (for many women to even utter the words "I am a lesbian" is extremely difficult), second, her non-stereotype gay lifestyle – which often involves previous and/or existent marriage(s) and children – and third, her inability to offer a narrative of pain and suffering that is rich in details (including dates) due to trauma. In short, if a lesbian asylum seeker fails to depict her sexual orientation as "fateful and irreversible" (so the wording of the German LGBT asylum law) and to remember and narrate episodes of violence with great accuracy, she risks her status as a protection-worthy subject as stipulated under the 1951 Refugee Convention.

In general, critical gender and migration scholars have pointed out the precarious situation of women within the asylum system – globally and nationally– that is designed to protect (male) subjects who assert their individuality against an oppressive state through coherent, credible, and rational speech and narrative (McKinnon 2009; Luibhéid 2002). Asylum narratives that frame violence and persecution in clear political terms tend to be more easily recognizable within the asylum regime (Shuman and Bohmer 2004). This has a severe impact on women asylum seekers and refugees who often make claims on gender-based persecution. As a UNHCR report from 2017 states; "Judges in EU member states are applying restrictive interpretations of existing national and international legislation and deciding that even though women have faced torture, threats of assassination, forced marriage, and sexual abuse and have been the victims of trafficking, these forms of gender-based persecution do not qualify them for asylum."<sup>7</sup> Until recently, the courts in the EU could rule that gender-based violence does not qualify for refugee protection as it is not based on race, religion, nationality, social grouping or political beliefs – the five grounds for asylum included in the 1951 Refugee Convention.

In response to these shortcomings, Germany ratified the Istanbul Convention in February 2018 – a legally binding human rights document that recognizes gender-based violence as a specific form of violence that particularly affects women because they are women and vows to set into place mechanisms to prevent violence against women.<sup>8</sup> The Istanbul Convention in its Article 60 and 61 confers protection on refugee women against violence and acknowledge that the latter could amount to persecution. As of February 2019, twenty-two percent of Germany's 42 percent female asylum seekers have successfully gained refugee status as victims of gender-specific persecution

(i.e. forced marriage, FGM, honor killing, rape, domestic violence, or sex trafficking). This number constitutes almost 10 percent of all asylum cases.<sup>9</sup> However, a report by the Women Refugee Commission shows that in Germany there are (still) no standardized processes in place that would help to identify female asylum seekers who have been subject to gender-based violence.<sup>10</sup> The two asylum lawyers I interviewed for this research confirm such concern. They both contend that accounts of gender-based violence are often deemed as not credible due to the lack of concrete evidence and in detail narrations of the episodes of violence and does not take into consideration that women on the move are particularly vulnerable to gender-based violence, including trafficking.<sup>11</sup>

I am concerned, however, that despite these legal reforms, lesbians, or women who identify as being sexually attracted to other women, file way fewer asylum cases than gay men. While exact numbers cannot be substantiated due to the missing data on sexual orientation asylum cases, out of the hundred-and-fifty-five LGBTQI+ asylum cases that I have accessed through publicly available adjudication databases administered by the various administrative courts in Germany, only eleven were filed by women and three by transwomen. These numbers are bolstered by several NGO statistics which state that generally only one out of ten LGBTQI+ asylum cases concern lesbian or bisexual women.<sup>12</sup>

Scholarship on lesbian asylum in the UK (Lewis 2013; Bennett 2013), Italy (Rigo 2017), Australia (Millbank 2003), and the U.S. (Schumann and Bohmer 2014; Neilson 2005) suggests a similar scenario. And as critical queer and migration scholars point out, such globally men-dominated LGBTQI+ asylum system tends to the stereotype myth of the white male gay victim is most readily recognized (Vogler 2019; Spijkerboer 2017; Raboin 2017, 2016; Giametta 2014; Shakhsari 2014a and 2014b). As a result, there exist very little precedent involving lesbian asylum seekers in Europe which renders it difficult for advocates to invoke previous case decisions for the assessment of lesbian asylum cases. In addition, lesbian asylum seekers still find themselves pre-dominantly within an asylum system in which the claims of gay male asylum applicants who have experienced persecution and human rights violations within the public sphere are more readily recognized. It is precisely the invisibility of women's experiences, Rachel Lewis (2013, 177) argues, that

ultimately constructs lesbians as “deportable subjects”. I would add that race in its sexualized form further contributes to the exclusion of lesbians from refugee protection.

### **Female victimhood and Femininities in Asylum Discourse**

The sexualization of racialized body and mind is the twin of de-sexualized and de-racialized ideals of femininity and womanhood. Such culturally sanctioned form of femininity, theorized by Hoskin and Blair (2015, 232) as “essentialized femininity” that encapsulates the (white) heterosexually available cis-woman, considerably structures discourses on victimhood in the context of the current feminization of asylum in Europe. The core validation of such femininity discourse lies in the emblematic mother-with-child image. In 2016, the number of women and children seeking asylum in the European Union trumped – for the first time since the beginning of the so-called ‘refugee-crisis in 2015 – that of men. UNICEF announces that about six in ten individuals seeking asylum registered at the Macedonia border with Greece were women with children or unaccompanied minors.<sup>13</sup> Representations of female refugees holding their children in despair and/or crying for their children lost in the Mediterranean Sea, of single mothers trying to provide for the bare minimum for their young children in refugee camps in Europe and in the Middle East, and of mothers who are awaiting for family reunification in Europe came to be pervasive in the media, policy making, and humanitarian debates. The beginning of Nigerian novelist Chinua Achebe’s famous poem *Refugee Mother and Child* that refers to women in refugee camps during the Biafra war in the late 1960s, very succinctly captures the representation of female refugees in today’s Europe;

*“No Madonna and Child could touch  
that picture of a mother's tenderness  
for a son she soon will have to forget.”*

These few lines depict an image of a caring and grieving mother who knows that the death of her son is immanent – unavoidable. In this imagery, the dying son is wrapped in the tender blanket of his mother’s love and dedication. The same “Madonna and child” trope depicting a woman’s tenderness, grief, and vulnerability that emerges from her motherhood came to characterize victimhood of women asylum seekers in Europe. In this respect, idealizations about motherhood, which presupposes a very specific ideal of femininity and womanhood as embodied through



tenderness and caring, constitute an important boundary of protection or non-protection worthiness. One could argue that mother and children refugees “become fully moral agents’ (Mbembe 2003, 13) within humanitarian discourse through society’s capacity for re-creating subjecthood through a specific social imaginary around femininity. And as the author Emily Cousens of a 2015 Independent article entitled “We Need to Stop Telling Ourselves that Women and Children are the only Refugees that Matter” points out, women and children, mediatized and idealized through the “Madonna with child” trope, were seen as the most vulnerable and thus most protection worthy subjects during the ‘migration-crisis’.<sup>14</sup> Such imagery, I contend, simultaneously humanizes and de-humanizes the female asylum seeker/refugee in that it depicts the well recognizable pain of a mother for her children while at the same time universalizing such experience through the rationalization of the mother-child refugee that allows for the collective identity of the “good” female asylum seeker/refugee.

Sex trafficking is yet another area where we can observe the stylized representations of women on the move as vulnerable and passive victims within asylum discourse. A European Commission report from February 2019 points out that among the migrants who currently seek asylum in Europe from war and conflict in sub-Saharan Africa, North Africa and the Middle East, many of them are victims of trafficking either in their countries of origin or in the EU upon their arrival.<sup>15</sup> The report states that female asylum seekers constitute a ‘particular vulnerable group’ which is in need of extra protection. According to the same report, the United Nation’s International Organization for Migration (IOM) identified 2,000 victims of trafficking between 2014 and 2015 and over 6,000 in 2017. Scholars of gender and migration have long voiced their dissatisfaction with the representation of victims of trafficking as predominantly victims of barbaric conditions in their countries of origin – rather than neoliberal politics – and as passive and enslaved and thus devoid of agency (Andrijasevic 2016; Doezema 2013). As Andrijasevic (2016, 2) reminds us, stereotypical trafficking representations consists of a specific script around a “sexual story” that locks women and girls into a position of absolute powerlessness. The real victim of trafficking is then part of a larger collective victim identity around gender, sexuality, and race that neatly fits the humanitarian notions of exploitation, victimhood, and sex-gender categorization (Andrijasevic 2016, 2– 3). The mythological function of the trafficking plot is simple: Young, naïve, and beautiful women are kidnapped from their homes and coerced into migration before they are

imprisoned in brothels and forced into prostitution (Andrijasevic 2016; Doezeema 2013). Such narrative, however, as Andrijasevic (2016, 3) point out, excludes those women who do not fit the narrow definition of the ideal victim.

In the context of the ‘migration crisis’ in Europe, representations of migrant and refugee women and children as the most vulnerable and thus most protection worthy subjects within a transnational humanitarian regime, correlates with a victim space that is framed by the language and experiences that are predominantly associated with the victimhood of white wealthy women. Such phenomenon is particularly well theorized in Black radical feminist scholarship in the United States and finds applicability in the German context too. In the U.S. in the 1930s, rape laws were put in place to protect the women of white affluent men from sexual assault by Black men (Davis 1981, 172). While the law was designed to protect the property of white upper-class men, the victim image that transpired from such law was the protection-worthiness of white, innocent, naïve, married women, who have no control over their sexuality. Here, this particular representation of the feminized victim corresponds with a particular image of what Blair and Hoskin (2015, 232) call a “culturally sanctioned femininity” that is rooted in a Victorian model of “proper womanhood” which necessitates the white, heterosexual, and cis-gendered female subject. At the same time, Angela Davis (1981, 182) writes in the US context, the myth of white female victimhood constituted the myth of the “bad black woman” and as sexually desiring. “Viewed as “loose women” and “whores”, Black women’s cries of rape would necessarily lack legitimacy” (Davis 1981, 182).

Angela Davis’ account of white female victimhood as the twin of Black women’s hypersexuality transpires also in the asylum context in Germany where, as I will show, the pain and suffering of Black homosexual women risks remaining invisible under the heavy discursive cloak of race and desire. The association of Black women with sex and desire in Germany can be traced back to the colonial context. As the late Audre Lorde (1992, 28) in her book *Showing our colors: Afro-German women speak out* contends, German colonizers denounced Black women’s bodies, as sexually exploitable. This is in contrast to the image of German women, who followed their husbands to the colonies in Togo, Cameroon, Namibia, or Tanzania, whom the Germans saw as in need of protection from the sexually-driven and savage (Black) man. Such image does not only define the womanhood of African and German women in the former colonies, but it still finds a great deal of

relevance in Germany today. For example, historian and feminist Tina Campt (2004) notes that while lighter skinned Afro-German women tend to be valued as “exotic beauties” at the best, darker skinned women, and especially immigrant women from the African continent, however, are seen as the sexualized “other” and thus unable to fit the category of “proper womanhood” and, consequentially, the German ideal of white femininity.

In this article, I am not saying that Germany’s asylum system is entirely structured by a representation regime that presupposes the hypersexualization of women racialized as Black. I am saying, however, that the idealized version of refugeehood, based on detailed ‘evidence’ of pain and suffering – the “asylum story” (Wooley 2017, 376) – is often difficult to attain for asylum seekers who do not fit the “good victim” stereotype. I will show that the myth of the *deserving* refugee is structured by idealizations around gender, sexuality, race, and class (Lewis 2014; Bohmer and Schuman 2008). Against such background, I argue, there is a need for a more reflexive approach to asylum that allows for critical reflections on how culturally sanctioned stereotypes in regard to race, gender, sexuality, and class inform decision-making in the asylum process.

### **The Construction of Victimhood and Sexualities in the Black Lesbian Asylum Story**

Between November 2018 and March 2019, I have conducted semi-structured in-depth interviews with eight LGBT women from Uganda, Kenya, and Tanzania who are currently seeking asylum in Germany. The plot of their “asylum story” is similar. They all fled gender-based violence and discrimination back in their countries of origin to be later caught up in “Germany’s messy asylum system that is geared toward deportation rather than integration”, as an asylum lawyer from Bavaria tells me.<sup>16</sup> All women discovered their homosexuality during their teenage years. Once their families found out, their life changed drastically. Indeed, the involuntary coming out usually marks the end of family life, the discontinuation of their higher education, lack of safety, and the beginning of a life filled with abuse, fear, a deep sense of loneliness, and bureaucracy. All women univocally state that the violence they have encountered in their countries of origin on the part of the family, community, and the state are directly linked to their sexual orientation. And all of them feared for their live in their country of origin. In Uganda, Kenya, and Tanzania, homosexuality is

illegal and punishable with a prison sentence of up to thirty years. Moreover, all these countries have over the last five years experienced an uptick in anti-LGBT politics and sentiments that resulted in the stricter legislation of sexual orientation and the impunity of those who actively discriminate against LGBTQI+ people.

So, those women who can financially afford it, pay a “travel agent” or an acquaintance to organize their journey to Europe, the US, or Canada. “I came to Europe because I wanted to be safe and live my life as who I am”, says Nurey, a thirty three-year old lesbian asylum seeker from Tanzania.<sup>17</sup> However, the women’s journey to safety and personal integrity is often complicated by bureaucratic expectations around homosexuality and victimhood as expressed in the “asylum story”. The “story” is everything, says a counselor at the Refugee Council in Cologne. If the asylum seeker cannot produce an evidence based and consistent narrative of their “lesbian biography”, their chances to receive asylum protection in Germany drops drastically. However, whether or not someone can present their queer biography in a manner that fits institutional expectations of refugee-victimhood, often depends on the person’s ability to talk openly about their sexuality and to provide a detailed narrative of the abuse and violence they have suffered due to their sexual orientation. “Something that can be very difficult for those who could not openly talk about their sexual orientation back in their country of origin and who suffer from trauma caused by violence that is a result of their sexual orientation”, the counselor says.<sup>18</sup>

### ***The Denial of Victimhood in Hope and Livia’s Asylum Story***

Hope tells me the story of her life as a closeted lesbian in Uganda and as an asylum seeker in Germany over dinner in an Afghan restaurant. Hope was fifteen years old when she had her first sexual encounter with a friend from High School. Both girls were expelled from school after their relationship was discovered. At age seventeen, her father married her off (against her will) to a friend of his— an elderly man with multiple wives – so as to “correct” her sexual orientation. After about a year, Hope left the abusive marriage, that caused her to lose two pregnancies as a result of physical violence and convinced her father to let her study at the university in Kampala. At university, she met her partner with whom she was in a relationship for almost ten years. In a context of rapidly increasing anti-LGBT politics and violence in Uganda, which culminated in the Anti-Homosexual Bill of 2014<sup>19</sup>, the couple was very cautious to keep their relationship secret.

However, in 2017, their apartment was raided by a mob of neighbors who got suspicious over the years. Hope's partner got heavily injured and was ultimately brought to the hospital. Hope, on the other hand, ended up in police custody for almost a week (she does not want to talk about her time in jail). This incidence firmed her decision to flee Uganda. With the support of her mother, Hope arranged for her air travels to Italy through a local "travel agent". However, as it turned out, the "travel agent" was a member of a trafficking ring. So, instead of fleeing to safety, Hope became victim of sex trafficking. After serving about five 'clients' a day over the course of a month, one of her regulars helped her to make the journey to Germany where she registered as an asylum seeker in February 2018. Hope currently lives as a closeted lesbian in a refugee camp in a small Bavarian town together with other asylum seekers and refugees from mostly Sub-Saharan countries – the same people she fled from in the first place.

In August 2018, the Federal Office for Migration and Refugees in Bavaria rejected her claim on the grounds that her account of her homosexuality, harm, and pain was not credible. The decision states that Hope does not fall under the protection of the Refugee Convention of 1951 in the strict sense because "she [the petitioner] has not successfully established a substantiated fear of being persecuted". The fact that Hope was subject to a forced marriage and victim of marital rape, domestic violence, and sex trafficking – violations directly connected to her sexual orientation – was entirely erased in the decision itself. These severe human rights violations were deemed as either not directly related to her LGBT asylum claim or simply as not credible. The decision states that "the forced marriage was not in direct relation to her current asylum case and can thus not be considered". The BAMF further dismissed the sex-trafficking episode as not credible stating that "it is not clear whether the petitioner's account of sex trafficking has ever taken place as the highly educated petitioner can't remember names nor exact places. [...] However, if it were to be true than there would be no threat of re-trafficking since she is no longer in touch with her family [who organized her travels]." Lastly, the BAMF dismisses the mob violence and ensuing detainment as irrelevant since Hope injuries were not severe and the police detention not long enough. The asylum rejection and the unknown future weigh heavy on Hope: "Before [coming to Germany] I used to have dreams. I used to have a future. But now, I can't even get myself to go out", she says.<sup>20</sup>

Livia's asylum story is similar. Livia discovered her homosexuality in high school. Once her family found out, Livia was forced into a marriage with an abusive man with whom she has one son. A secret relationship with a woman led to the divorce. Shortly after the separation from her first husband, Livia entered a second marriage so as to conform to a heterosexual lifestyle and to shield herself from persecution and ostracization in a context of growing homophobia in Uganda. After the second husband, with whom she has two children, found out that she was a lesbian he beat her so badly that she now suffers from chronic back pain. The police detained her for three days after her husband told them about her homosexuality. During these three days, Livia was victim of "corrective rape" by several police officers. After her release, Livia lived on her own and focused on raising her three children while avoiding all social contacts out of fear to be outed. However, in 2016, Livia fell in love with a woman with whom she lived for a short time period before their house was raided by a mob. Both women got heavily injured and Livia was afraid that the mob would actually kill them in the future. After that incidence, Livia took the opportunity of a conference in Germany, organized by her local church, to get a tourist visa and flee Uganda. She left her three children behind with her sister. Once in Germany, Livia filed for asylum in April 2017. Her claim was rejected in November 2018. The BAMF justified the rejection arguing that Livia's narratives of mob violence, police detention, forced marriage, and corrective rape do not seem credible as they lack "concreteness", "clarity", and "richness of detail". The decision further reads that in the event that these violations have actually occurred, "it is not clear whether or not they directly relate to the petitioner's sexual orientation".

The decisions in these two cases show the disconnect between gender-based violence and sexual orientation in the construction of victimhood for the purpose of asylum. Why have the episodes of violence in Hope's and Livia's queer biographies not been linked to their homosexuality, one might ask. And, why is it that both of them have been denied victim-status under refugee law despite the endured violence being protected by the Istanbul Convention of 2011? I would like to attempt to answer these questions by arguing that Hope and Livia's asylum story does not fit the mythological fiction of the "helpless", "mute", and "naïve" victim identity that presupposes heterosexual conceptualizations of female fragility and sexual vulnerability (Andrijasevic and Mai 2016; Sheill 2009). As queer women racialized as Black, both of them have made conscious

decisions to “mess up the pristine homo/hetero normative social order of things” (Manalansan 2018, 1288) by choosing not to conform to normative ideals of femininity. In fact, both actively and willfully acted on their homosexual desires even if that meant to cheat on their marital partners, to deceit their families, and to leave children behind in their pursuit for sexual freedom and happiness. So, their “sexual story” is not primarily about helplessness – but about agency. The aberration from heteronormative societal codes around femininity and victimhood as so accurately encapsulated in the “Madonna with child trope” or the mythological fiction of “*the* sex-trafficking victim”, I would argue, illustrates the limits of the gender violation-based protectionist model of human rights and refugee law. It moreover illustrates normative specific gender assumptions in asylum law which presuppose masculine constructions of femininity as expressed through “modesty”, “purity”, and “weakness”. The non-conformity character of these two asylum cases leads to what Schuman and Bohmer (2014) term in the context of the UK “cultural silences” in the political asylum process. Schuman and Bohmer (2014, 941) theorize these “cultural silences” as a process where institutional and bureaucratic expectations of the “good” and “credible” asylum story silence and render invisible non-normative narratives of pain and suffering. These “cultural silences”, however, are not empty or void of meaning, rather, they open up new spaces of visibility, hypervisibility, and intelligibility.

### ***The Sexualization of the Lesbian Asylum Seekers Racialized as Black***

Gaps in the asylum story – the untold – which implicate these cultural silences, are often a result of shame and humiliation. Both Livia and Hope told me in a personal conversation that while they are proud lesbians, they felt uncomfortable to narrate their sexual experiences with women (and men) in great detail. “It’s private”, says Hope. “I feel uncomfortable sharing the details of my sex life and I do not think that this should be the point of the asylum interview”, she adds. As I will show in this section, the gaps in the asylum story of Hope and Livia combined with the absence of normative female victimhood create room for stereotype imaginations of Black womanhood. As gender and migration scholars have long pointed out, the asylum process is not neutral. Instead, it is infused with prejudice around, race, gender, and sexuality that structure ideas around credibility and eligibility (Schuman and Bohmer 2014; Lewis 2014; O’Leary 2008; Murray 2014; Luibhéid

2002; Berg and Millbank 2009, Vogler 2016). In what follows, I will examine the manner in which the spaces of silence in Hope and Livia's asylum story potentially creates room for bringing in the above-discussed colonial trope of the hypersexual Black woman that is simultaneously ever-visible and invisible.

Hope is 33 years old and single. As she tells me in a personal conversation, her dream would be to find a female partner with whom she would have a family – one day. Indeed, her longing for a child is strong. While at the time of writing this paper, Hope was not actively looking for a partner in Germany. As mentioned earlier, Hope lives as a closeted lesbian in a small and remote Bavarian town with no access to local LGBTQI+ friendly/safe spaces. The only time she has a chance to mingle with other lesbians is when she undertakes the two-hour journey to the city to see her asylum counsellor which gives her the opportunity to meet up with other lesbians affiliated with the counseling center. The journey to the city, however, is expensive and her visits thus scarce. In addition, Hope suffers from depression caused by her experience as a victim of sex-trafficking as well as by a sense of isolation she experiences in the refugee camp. Nevertheless, the decision-maker finds it difficult to comprehend that Hope would not act on her homosexuality in Germany and engage in a romantic relationship. “The fact that the claimant does not have a same-sex relationship in Germany casts doubt on her claim of being a homosexual”, the decision reads. Such doubt is, in the eye of the decision-maker, further bolstered by the absence of a sexual relationship between Hope's first same-sex experience at High School and her long term-relationship at University, which started after the termination of her marriage. “The fact that the petitioner was not sexually active and did not express desire to have sex during puberty seems not credible”, the decision states. And lastly, the assessor finds it difficult to imagine that “the petitioner managed to live secretly in a relationship with her partner for almost ten years’, implying Western homonormative idealizations of the public visibility of affection and desire. However, as Hope tells me in regard to that stance in the document: “I never came fully out. I can't do it in Uganda otherwise people will beat you to death or you end up in jail. The police do not protect you. So, I never talk about these things.”

What emanates from these statements of doubt in Hope's queer biography is that the cultural silences around sex and desire create room for institutional re-imagination around sexuality and desire. Hope's silences around sex and desire combined with the biographical gaps in regard to



her homo-sex life opened up space for the decision-maker to bring in colonial stereotypes of Black women's hypersexuality. Indeed, it seems that these silences have disturbed "a particular race discourse that historically has reduced Black women to their embodiment of sex" (Crenshaw 2018; Collins 2009) and that needs to be tested. Why did the claimant not have sex during her best years of her life [puberty]? If her long-term same-sex relationship was indeed real, then how did the claimant manage to keep such a secret for almost a decade? And, why is it that the claimant shows no desire to engage in a sexual relationship in Germany where she is free to do so? The manner in which these questions structure the assessment of Hope's asylum case suggests a continuation of the Western colonizing project, whereby Black female bodies and Black sexual practices are fetishized to express the superiority of the [masculine] enlightened West. Such racial fetishizations not only essentialize culture and race in the asylum discourse but further isolate Black women from a humanitarian approach to sexual violence through silencing their pain and suffering. In its essence, such process of hypersexualization through "cultural silences" tends to remove Black women from feminized idealizations of victimhood and thus refugee protection. At the same time, these "cultural silences" – resulting in sexual invisibilities – create room for questioning the identity of Black lesbians as "true lesbians" in a Western homonormative sense. It is here where the intersectionality of gender, sexuality, and race proves to be particularly complex.

While the hypersexualization of Hope is rooted in the unfathomable imagination of the non-desiring Black female body, Livia's sexualization derives from assumptions around motherhood and promiscuity. The decision reads that;

[T]he claimant cannot credibly explain why she, as a homosexual, has three children from two different men. Particularly her explanation about why she married a second time does not make sense when she says that people kept asking her why she was not married. Because during that time, she was already the mother of a child from her first husband. So, the pressure to marry is not the same as with a young childless woman.<sup>21</sup>

This passage in Livia's decision document reminds me of Patricia Hill Collins' important article *It's all in the Family: Intersections of Race, Gender, and the Nation* where she makes a case for the white-patriarchal family ideal – consisting of a married heterosexual couple with biological children – as being the nexus from where racial and sexual hierarchies are organized. Collins (1998, 159) argues that broken families are often seen as idiomatic for the inferiority of Black families in the US who do not live up to the white family ideal. And as radical Black feminist

scholarship illustrates, Black women's deviation from an idealized heterosexual lifestyle indicates her hypersexuality (Collins 2009; Crenshaw 1989). The fact that Livia was married twice and that she has three children from two different men while simultaneously entertaining same-sex relationships with women was not well received by the decision-maker. In fact, the decision-maker's disliking of Livia's "promiscuous lifestyle" clearly crystallizes when he asks about the necessity of the second marriage as a woman who already was married with a child *and* as a lesbian (who should not have sex with men anyways). For Livia, however, the marriages (and children) were not a choice. She contends that "if you [women] stay alone and you are not married, people start questioning your status. So, for me, in order to hide my status [homosexuality] I definitely had to get married so I can hide. Of course, that is also how children come. You cannot stay with a man and not have sex with him."<sup>22</sup>

The cases of Livia and Hope show the manner in which the absence of overt sex and lust and the existence of children and marriages in queer biographies tend to exclude lesbians racialized as Black from the protectionist framework of asylum law and practice structured by stereotypes around hetero- and homonormativity. Conversations I had with counsellors who work with lesbians from Sub-Saharan Africa conform such argument. One counsellor, for example, tells me that;

Black lesbians who have been previously married with children are usually not believed to be true lesbians. The same goes for lesbians who desire children and have sex with a man to become pregnant. Moreover, lesbians who are not an active part of gay life in Germany and who do not have partners also run the risk of not being credible.

However, one might ask, how can we expect lesbian asylum seekers who are often traumatized by the experience of sexual violence and ostracization to enthusiastically engage in Western gay lifestyle after just a short time of their arrival in Germany? How can we expect them to be open about their sexual orientation when they are housed with people who often display homophobic attitudes and often feel shame and humiliation to do so? And how can we work toward a more inclusive asylum system in Germany and Europe more generally when non-Western homonormative asylum stories are often discredited as not credible? And, lastly, how can we adequately grasp the interconnections between gender-based violence and sexual orientation for Black lesbian asylum seekers while adhering to a de-racialized idealization of female victimhood? My analysis of the two cases in terms of idealizations around gendered forms of victimhood and

racialized forms of sexuality, reveals the importance of an intersectional lens in asylum cases dealing with lesbians racialized as Black. Thus, the intersectionality of gender, race, and sexuality within the asylum system needs to be addressed on the level of policy, law, and practice within the Common European Asylum System.

## **Conclusions**

Lesbian asylum seekers are particularly vulnerable to abuse and human rights violations within the private sphere such as forced marriages, domestic violence, marital rape, sexual violence within the family and community, and forced pregnancies as well as abortions. While there have been recent legislative and policy reform in regard to gender-based violence of EU asylum applications with the Istanbul Convention, it is difficult for lesbian asylum seekers to document and evidence persecution by non-state actors. My analysis of Hope and Livia's asylum claims shows that lesbians of color grapple with a racialized asylum system within which the privilege of victimhood is mostly reserved to those women who embody patriarchal and de-racialized ideals of womanhood and femininity. I argue that Black queer biographies risk to be assessed in terms of sexual agency rather than gender-based violence in Germany and by its extension Europe. This, I contend, jeopardizes protection-status to Black lesbians who made their own decisions about their sex life. My analysis of fourteen administrative court decisions pertaining to lesbian asylum cases from Nigeria, Zimbabwe, Uganda, Macedonia, Iran, and Georgia, however, shows that good legal practice, even though still very limited, does exist in Germany.<sup>23</sup> In the four cases where refugee protection has been granted, the decision statement evinces the judge's in-depth understanding of gender-based violence as it relates to race and sexuality. In all cases, the judges acknowledged that gender-specific violence such as forced marriages, rape and forced pregnancies were the direct result of the plaintiff's sexual orientation. Indeed, the judges granted refugee protection on the grounds of sexual orientation by firmly establishing the connection between sexual orientation and gender-based violence on the one hand and by acknowledging the effect of homophobic laws and societal attitudes on individual's right to sexuality and privacy on the other.

So, in conclusion, I would like to suggest that there is a need to sensitize decision-makers and judges to the intricacies of queer asylum stories that challenge heteronormative and

homonormative ideals of victimhood. In line with the Istanbul Convention from 2011 as well as current LGBTQI+ asylum law, decision makers and judges must receive training in regard to the specific forms of non-state and state violence lesbians are subjected to. At the same time, decision-makers must be attuned to queer biographies by respecting women's decision to choose to engage in a same-sex relationship even if that means to conform to a heterosexual lifestyle in the area of marriage and the family. Decision-makers and judges must receive training in terms of how gender-based violence of lesbians relate to their sexual orientation by getting better acquainted with the cultural context in the countries of origin and/or by seeking the advice of a cultural and country condition experts. And lastly, actors involved in the asylum decision-making process must develop a reflexive approach to queer asylum that allows them to recognize stereotypes they might have in regard to homosexuality, race, and gender so as not to reproduce colonial and imperialistic narratives of femininity, womanhood, sex, and desire.

There are very few precedent cases in Germany that have granted asylum to Black lesbian womxn from Nigeria, Uganda, and Simbabwe and from which we can learn. These four administrative court decisions recognized that these womxn belong to a particular vulnerable group and if they were to live their homosexuality openly, they would face discrimination and threats which would not apply to their heterosexual peers. In each case, the judges paid particular attention to the manner in which episodes of gender-based violence (i.e. forced marriages, rape and forced pregnancies) are linked to their mostly "involuntary" coming-outs within the family and community. These decisions further acknowledge the current uptick on homophobic legislations and attitudes in large parts of Sub-Saharan Africa. In short, not only are these decisions conform with CoJEU case law on LGBTQI+ asylum and the 2011 Istanbul Convention, these decisions further exhibit the decision-maker's deep understanding of the manner in which gender-based violence is experienced by non-heterosexual womxn who find themselves within increasingly conservative political and societal contexts.

Following Hammond's postulation, I press for a heightened sensitization of decision-makers and judges in the asylum context to recognize non-Western sexualities. While such suggestion is not new (Tschalaer 2019; Dustin and Held 2018), I would like to stress the need for a sensitization training that taps into and challenges familiar registers in terms of sexuality, race, and gender. In

other words, there exists a need for professional training that critically examines the manner in which bureaucrats reconfirm the boundaries that define the jealously guarded and politically bound category of the “victim” through a protection-rhetoric that confirms a racialized and sexualized fiction of female victimhood. Reminding ourselves of Achille Mbembe’s *Necropolitics* (2013), it is of utter importance that asylum practitioners develop an understanding of how race and (hetero-)sexuality, as social fictions, are critical for defining the boundaries of worthy and un-worthiness in humanitarian discourse. Indeed, as I have shown in this paper, the recognition of Black womxn’s pain and suffering depends to a great extent on their ability to construct a universally recognizable depiction of victimhood that resonates with the well-cognizable passive victim narrative.

Such statement blatantly highlight the necessity to follow through with Evelyn Hammond’s (1994, 21) quest to work toward articulating – indeed, finding a language – for describing and rendering visible Black female (homo-)sexualities within predominant white hetero- as well as homonormative spaces.

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## Endnotes

<sup>1</sup> These numbers are drawn from the statistics of two LGBTQI+ refugee counselling centers in southern Germany with whom I collaborated in the context of this research.

<sup>2</sup> NGO reports show that the rejection rate of LGBTQI+ refugees in Germany and other EU member states is about 50 percent. Available at <<https://www.politico.eu/article/gay-refugees-syria-lgbt-german-deportations-ignore-risks-asylum-seekers-face-at-home/>> (accessed 19 October 2018).

<sup>3</sup> This UN report from 2016 shows that about 43 percent of female asylum seekers were granted refugee status, ca. 24 percent received subsidiary protection, and ca. another 3 percent received domestic protection. Available at <<https://www.refworld.org/pdfid/59201c884.pdf>> (accessed 23 March 2019).

<sup>4</sup> Hope and Livia are pseudonyms as both women wish to remain anonymous. All information that would reveal their identity and current location has been removed.

<sup>5</sup> Originally developed by the writings of U.S. Black feminists, intersectionality is an analytical and theoretical concept designed to grasp the simultaneity of oppression created at the intersection of multiple identities such as race and gender (Crenshaw 1989).

<sup>6</sup> These are the 2013 CJEU ruling in C-199/12, C 200/12 and C 201/12, X, Y and Z, the 2014 CJEU ruling in the joined cases A (C-148/13), B (C-149/13), C (C-150/13) v Staatssecretaris van Veiligheid en Justitie and the 2018 CJEU ruling in case C-473/6.

<sup>7</sup> Report on the Legal Rights of Girls and Women Asylum Seekers in the European Union (2017). Available at <<https://www.refworld.org/pdfid/59201c884.pdf>> (accessed 18 March 2019).

<sup>8</sup> The Istanbul Convention is available at <<https://rm.coe.int/168046031c>> (accessed 7 February 2019).

<sup>9</sup> For the gender specific numbers of asylum cases see the Federal Office for Migration and Refugee statistic available at <<http://www.bamf.de/DE/Infothek/Statistiken/Asylzahlen/AktuelleZahlen/aktuelle-zahlen-asyl-node.html>> (accessed 15 March 2019). For the numbers of gender specific persecution cases see the Federal Office for Migration and Refugee statistic available at <[http://www.bamf.de/SharedDocs/Anlagen/DE/Publikationen/Broschueren/bundesamt-in-zahlen-2017.pdf?\\_\\_blob=publicationFile](http://www.bamf.de/SharedDocs/Anlagen/DE/Publikationen/Broschueren/bundesamt-in-zahlen-2017.pdf?__blob=publicationFile)> (accessed 15 March, 2019). Unfortunately, Germany only publishes the acceptance rate of gender-based violence cases but not the number of initial applications nor the rejection rate in this context. For more information see: <<http://www.bpb.de/gesellschaft/migration/kurzdossiers/280272/geschlechtsbezogene-verfolgung-rechtlicher-schutz>> (accessed 15 March 2019)

<sup>10</sup> Falling through the Cracks: Refugee Women and Girls in Germany and Sweden. Available at <<https://www.womensrefugeecommission.org/gbv/resources/1308-protection-germany-sweden>> (accessed 21 March 2019).

<sup>11</sup> Personal Interview with two asylum lawyers, Bavaria, 25 March and 27 March 2019.

<sup>13</sup> As according to a UNICEF report, the ratio of female to male applicants has risen from 30 percent in 2008 to 38 percent in 2015 and 41 percent in Germany or even 55 percent in Greece in 2018. See UNICEF report available at <<https://www.unicef.org/eca/emergencies/latest-statistics-and-graphics-refugee-and-migrant-children>> (accessed 9 April 2019)

<sup>14</sup> See Emily Cousens. The Independent, “We Need to Stop Telling Ourselves that Women and Children are the only Refugees that Matter”. Available at <https://www.independent.co.uk/voices/comment/we-need-to-stop-telling-ourselves-that-women-and-children-are-the-only-refugees-who-matter-10493332.html>> (accessed 27 March 2019)

<sup>15</sup> The EU report is available at [http://www.europarl.europa.eu/RegData/etudes/BRIE/2019/631734/EPRS\\_BRI\(2019\)631734\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2019/631734/EPRS_BRI(2019)631734_EN.pdf)> (accessed 24 March 2019).

<sup>16</sup> Personal Interview with an asylum lawyer, Bavaria, 27 March 2019.

<sup>17</sup> Nurey is a pseudonym as she wishes to remain anonymous. Personal interview with Nurey, 27 March 2019.



<sup>18</sup> Personal interview with a counselor at the Cologne Refugee Council, Cologne, 28 March 2019.

<sup>19</sup> See <<https://edition.cnn.com/2014/02/24/world/africa/uganda-anti-gay-bill>> (accessed 9 April 2019)

<sup>20</sup> My account of Hope's story is based on several semi-structured interviews conducted between November 2018 and February 2019.

<sup>21</sup> The translation from German into English is mine.

<sup>22</sup> Personal Conversation with Livia, 12 January 2019.

<sup>23</sup> These cases have been downloaded from the legal databases of the administrative courts in Aachen, Arnsberg, Bayreuth, Brandenburg, Braunschweig, Chemnitz, Frankfurt, Gelsenkirchen, Lüneburg, Mannheim, Oldenburg, and Sigmaringen.